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10/090,803	03/06/2002	William C. Houghton	06975-164001	6900

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EXAMINER

O STEEN, DAVID R

ART UNIT	PAPER NUMBER
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2623

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/090,803	HOUGHTON, WILLIAM C.	
	Examiner	Art Unit	
	David R. O'Steen	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1-16-2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-40 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 11-15, 17-18, 21-23, 25-26, 30, 36, 38, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurland (US 4,603,232) in view of Shah-Nazaroff (US 2002/0053077).

As regards Claims 1, 36, and 38, Kurland discloses a method, apparatus, and computer readable medium for polling interactive television viewers, the method comprising: identifying a pool of two or more entry elements; selecting entry elements such that subsets of entry elements are defined (such as responses to particular questions); configuring at least one polling request, each polling request including one of the subsets of entry elements, and each polling request prompting a viewer to evaluate at least some of the entry elements (these steps are necessary in the preparation of a market questionnaire to be distributed to panelists, cols. 3 and 4, lines

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47-68 and 1-6); preparing a first evaluation round that includes at least the polling request (cols. 7 and 8, lines 61-68 and 1-11) connecting to one or more interactive television viewers (col. 10, lines 14-17); sending the first evaluation round to the one or more set top systems of the one or more interactive viewers (the device comprising figs. 31.34, 31.108, and 31.106 functions as a set top box with up stream connectivity through modem, 31.26, fig. 31.14a, cols. 9 and 10, lines 58-68 and 1-24); receiving responses to the first evaluation round (col. 7, lines 49-51); identifying a second pool of revised elements that reflect more popular elements as identified in the first evaluation round such that the second pool includes fewer elements than the first pool (identifying popular elements in survey results is basic analysis and further requires that the "most popular" results are fewer the possible results is said results are meaningful, col. 7, lines 49-52); selecting revised elements such as that subsets of revised elements are defined; configuring at least one second polling request, each second polling request prompting a viewer to evaluated the revised elements, and preparing a subsequent evaluation round that includes at least the second polling request (fig. 3 shows that a questionnaire generally has more than one question, col. 7, lines 49-57). Kurland does not disclose that each second polling request including one of the subsets of revised elements. Shah-Nazaroff discloses that each second polling request including one of the subsets of revised elements (Shah-Nazaroff discloses, on figs. 4, 6, and 7, questionnaires with a variety of questions and with several possible selections. Some questions have 3 possible responses. Some have two. Some have seven. Others can

require other types. Shah-Nazaroff discloses the possibility to limit the possible responses of questions to a subset of responses of an arbitrary nature if desired).

At the time of the invention, it would have been obvious to one skilled in the art to combine the polling requests of Shah-Nazaroff, an analogous art, to the polling system of Kurland to allow more effective and focused responses from the panelist.

As regards Claim 11, Kurland further discloses designating polling rules for targeting the interactive television viewers (such as demographic data, col. 7, lines 57-60).

As regards Claim 2, Kurland discloses the method of claim 1 but fails to disclose that the first and second polling requests have two different sets of elements. Shah-Nazaroff discloses that the first and second polling requests have two different sets of elements (fig. 4, questions and answers to "Do you approve of the President's Performance in the Office" and "Your approval of the President's performance in Office has" are different).

At the time of the invention, it would have been obvious for one skilled in the art to combine the survey format of Shah-Nazaroff, an analogous art, with the questionnaire method of Kurland to give the user a variety of questions to respond to with a variety of answers.

As regards Claim 12, Kurland discloses the method of Claim 11 but fails to disclose determining context information of interactive television viewers. Shah-Nazaroff discloses determining context information of interactive television viewers (such as what program they are watching or just watched, paragraph 25).

At the time of the invention, it would have been obvious for one skilled in the art to combine the context information of Shah-Nazaroff, an analogous art, to the survey method of Kurland to ask more specific questions, perhaps questions relating to the program just watched.

As regards Claim 13, Kurland discloses applying the targeting rules to the context information to identify targeted interactive television viewers (such as by demographic data, col. 7, lines 57-60).

As regards Claim 14, Shah-Nazaroff discloses that determining the context information includes determining television programming being viewed by an interactive television viewer at a particular time (such as what program they are watching or just watched, paragraph 25).

As regards Claim 15, Shah-Nazaroff discloses determining television programming being viewed comprises determining the television programming tuned by a set top box (paragraphs 42, 43, and paragraph 53, lines 11-18).

As regards Claim 17, Shah-Nazaroff discloses determining context information associated with television programming available for delivery to the interactive television viewer (such as the program just watched, fig. 4, paragraph 42).

As regards Claim 18, Shah-Nazaroff discloses that determining context information based upon a television signal received by a set top box (such as the program just watched, fig. 4, paragraphs 42 and 43).

As regards Claim 21, Shah-Nazaroff discloses that preparing the first evaluation round includes preparing the polling requests based on context information associated

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with the television programming (such as preparing the survey to pertain to a program just watched, paragraph 44, and figs. 4 and 6):

At the time of the invention, it would have been obvious for one skilled in the art to combine the tailoring of polling requests as done in Shah-Nazaroff with the survey method of Kurland so that the survey is most effective a gathering the opinions of the viewers.

As regards Claim 22, Shah-Nazaroff further discloses comprises determining context information based upon a television series (Shah-Nazoff deals with providing surveys about programming such as in fig. 4, paragraph 44, an this programming can take on a variety of forms such as television series which oftentimes are sitcoms, paragraph 22).

At the time of the invention, it would have been obvious for one skilled in the art to combine the tailoring of polling requests as done in Shah-Nazaroff with the survey method of Kurland so that the survey is most effective a gathering the opinions of the viewers.

As regards Claim 23, Shah-Nazaroff further discloses comprises determining context information based upon a television series (Shah-Nazoff deals with providing surveys about programming such as in fig. 4, paragraph 44, an this programming can take on a variety of forms such an episode of a television show which oftentimes are sitcoms or a news segment, paragraph 22).

At the time of the invention, it would have been obvious for one skilled in the art to combine the tailoring of polling requests as done in Shah-Nazaroff with the survey

method of Kurland so that the survey is most effective a gathering the opinions of the viewers.

As regards Claim 25, Shah-Nazaroff discloses determining context information based on a program content category (such as asking specific questions about news broadcast, fig. 4, or children's film, fig. 6).

At the time of the invention, it would have been obvious for one skilled in the art to combine the tailoring of polling requests as done in Shah-Nazaroff with the survey method of Kurland so that the survey is most effective a gathering the opinions of the viewers.

As regards Claim 26, Shah-Nazaroff discloses prompting the interactive television viewer to select one element in the polling request of two or more elements (such as asking if approval increased or decreased or stayed the same, fig. 4).

At the time of the invention, it would have been obvious for one skilled in the art to combine the tailoring of polling requests as done in Shah-Nazaroff with the survey method of Kurland so that the survey will be intuitive and easy to fill out by the user.

As regards Claim 30, Shah-Nazaroff discloses that evaluating the responses includes determining which element in the polling request received the most votes (fig. 5).

As regards Claim 40, Shah-Nazaroff further discloses that at least one of the subsets of entry elements shares a common entry element with another of the subsets of entry elements (fig. 6).

Claims 3-5, 7, 8, 10, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurland (US 4,603,232) in view of Shah-Nazaroff (US 2002/0053077) and in further view of Lett (US 5,539,822).

As regards Claim 2, Kurland and Shah-Nazaroff disclose the method of claim 1 but fails to disclose that each element appearing in the set of polling requests is different from the every element appearing in the set of polling requests. Lett discloses that each element appearing in the set of polling requests is different from the every element appearing in the set of polling requests (fig. 3H).

At the time of the invention, it would have been obvious for one skilled in the art to combine the survey format of Lett, an analogous art, with the questionnaire method of Kurland and Shah-Nazaroff to give the user a variety of answers to use when responding to questions.

As regards Claim 4, Lett discloses that identifying a second poll of revised elements includes tallying the responses to the first evaluation round that have been received after a time limit (col. 16, lines 43-67).

At the time of the invention, it would have been obvious for one skilled in the art to combine the "timeout" of Lett, an analogous art, with the questionnaire method of Kurland to insure the prompt collection of data.

As regards Claim 5, Lett further discloses that the time limit is applied relative to a period that begins when the first evaluation round is initially displayed to an interactive television viewer (col. 16, lines 43-48).

As regards Claim 7, Lett discloses displaying particular content to the interactive television viewers based on evaluating the responses to the first evaluation round (such as showing the results gleaned from a plurality of participants to the questionnaire, fig. 4B.350 and col. 16, lines 64-67).

At the time of invention, it would have been obvious for one skilled in the art to combine the summarization data to viewers, as done in Lett, an analogous art, to the survey method of Kurland and Shah-Nazaroff because viewers are often curious about other people's opinions.

As regards Claim 8, Kurland and Lett disclose the method of Claim 7 but fails to disclose that the particular content includes a graphical user interface. Shah-Nazaroff discloses that the particular content includes a graphical user interface (such as an EPG, fig. 3, paragraphs 33-37).

At the time of the invention it would have been obvious to one skilled in the art to put the modified EPG of Shah-Nazaroff alongside the survey results of Kurland and Lett to allow the user easy access to highly rated programs on the survey.

As regards Claim 10, Lett discloses that the displaying of particular content uses the set top system (fig. 1.14, col. 5, lines 6-19 and 34-41).

At the time of invention, it would have been obvious for one skilled in the art to use the set top system to display results, as done in Lett, an analogous art, to the survey method of Kurland and Shah-Nazaroff so that the results are easily accessible to the viewer.

As regards Claim 34, Lett discloses that the set of polling requests includes sending a display to overlay television programming (col. 16, lines 33-36).

At the time of invention, it would have been obvious for one skilled in the art to use an overlay to display the survey, as done in Lett, an analogous art, to the survey method of Kurland and Shah-Nazaroff so that the survey is easily accessible to the viewer.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kurland (US 4,603,232) in view of Shah-Nazaroff (US 2002/0053077) and in view of Lett (US 5,539,822) and in further view of Hattori (US 5,719,619).

As regards Claim 6, Kurland, Shah-Nazaroff, and Lett disclose the method of claim 4 but fail to disclose that the time limit is common to all of the interactive television viewers. Hattori discloses that the time limit is common to all of the interactive television viewers (such as five minutes, col. 27, 48-60).

At the time of the invention, it would have been obvious for one skilled in the art to combine the time period of Hattori, an analogous art, with the questionnaire method of Kurland, Shah-Nazaroff, and Lett to insure the prompt collection of valid data.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kurland (US 4,603,232) in view of Shah-Nazaroff (US 2002/0053077) and in further view of Lett (US 5,539,822) and in further view of Bejan (US 5,465,384).

As regards Claim 9, Kurland, Shah-Nazaroff, and Lett disclose the method of Claim 7 but fails to disclose that the particular content includes multimedia data. Bejan discloses that the particular content includes multimedia data (such video scenes, abstract, figs. 2.114 and 2.116, col. 8, lines 7-39).

At the time of the invention it would have been obvious to one skilled in the art to show the user selected scenes of Bejan after the survey of Kurland and Lett to allow the user some control over programming content.

Claims 16, 19, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurland (US 4,603,232) in view of Shah-Nazaroff (US 2002/0053077) and in further view of Belmont (US 5,819,156).

As regards Claim 16, Kurland and Shah-Nazaroff disclose the method of Claim 14 but fail to disclose that determining television programming being viewed comprises determining the television programming using an EPG. Belmont discloses that determining television programming being viewed comprises determining the television programming using an EPG (col. 3, lines 53-65).

At the time of the invention, it would have been obvious to one skilled in the art to combine the television programming identification system of Belmont, an analogous art, with the survey system of Kurland and Shah-Nazaroff to make sure that the questionnaire is appropriate for the program just watched.

As regards Claim 19, Kurland and Shah-Nazaroff disclose the method of Claim 17 but fail to disclose determining context information based upon a channel

identification number. Belmont discloses determining context information based upon a channel identification number (by tracking channels watched and cross-referencing them with a program guide, col. 3, lines 53-65).

At the time of the invention, it would have been obvious to one skilled in the art to combine the channel identification system of Belmont, an analogous art, with the survey system of Kurland and Shah-Nazaroff to make sure that the questionnaire is appropriate for the program just watched.

As regards Claim 24, Kurland and Shah-Nazaroff disclose the method of Claim 17 but fail to disclose determining context information based upon an EPG identity. Belmont discloses determining context information based upon an EPG identity (by tracking channels watched and cross-referencing them with a program guide, questions could then be tailored, col. 3, lines 53-65).

At the time of the invention, it would have been obvious to one skilled in the art to combine the program identification based on EPG data of Belmont, an analogous art, with the survey system of Kurland and Shah-Nazaroff to make sure that the questionnaire is appropriate for the program just watched by the viewer.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kurland (US 4,603,232) in view of Shah-Nazaroff (US 2002/0053077) and in further view of Aras (US 5,872,588).

As regards Claim 20, Kurland and Shah-Nazaroff disclose the method of Claim 17 but fail to disclose determining context information based upon a broadcast

identifier. Aras discloses determining context information based upon a channel identification number (by embedding the broadcaster ID inside the tag, it becomes easy to identify the broadcaster, col. 8, lines 52-65).

At the time of the invention, it would have been obvious to one skilled in the art to combine the broadcaster identification system of Aras, an analogous art, with the survey system of Kurland and Shah-Nazaroff to make sure that the questionnaire is appropriate for the program just watched.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kurland (US 4,603,232) in view of Shah-Nazaroff (US 2002/0053077) and in further view of Frost (US 5,041,972).

As regards Claim 27, Kurland and Shah-Nazaroff disclose the method of Claim 1 but fail to disclose prompting an interactive television viewer to rank order a list of elements. Frost discloses prompting an interactive television viewer to rank order a list of elements (fig. 1 and col. 7, lines 32-54).

At the time of the invention, it would have been obvious to one skilled in the art to combine the ranking interface of Frost, an analogous art, with the survey system of Kurland and Shah-Nazaroff to give the user an easy way to evaluate programs.

Claims 28-29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurland (US 4,603,232) in view of Shah-Nazaroff (US 2002/0053077) and in view of Inaba (US 5,880,789).

As regards Claim 28, Kurland and Shah-Nazaroff disclose the method of Claim 1 but fails to disclose determining two or more elements in the new polling request includes a most selected element in a first polling request and a most selected element in a second polling request. Shah-Nazaroff discloses determining the most selected element in a first polling request and a most selected element in the second polling request (fig. 5). Kurland and Nazaroff, however, fail to disclose that most selected elements comprise two or more elements in a new polling request. Inaba discloses that most selected elements comprise two or more elements in a new polling request (Inaba discloses a tournament system for user game, which involves picking the user with the most points to proceed, col. 5, lines 53-54).

At the time of the invention it would have been obvious to one skilled in the art to combine the element selection system of Inaba, an analogous art, with the poll creation method of Kurland and Shah-Nazaroff to allow users to pick programs using a common, easy-to-understand tournament system.

As regards Claim 29, Inaba further discloses that the set of polling requests continues until there is one element that has not been selected to a lesser degree than other elements in any polling request of the most selected elements and the other elements (a tournament normally proceeds until there is a clear winner, col. 5, lines 53-54).

As regards Claim 31, the rejection is similar to the rejection of Claim 28. Shah-Nazaroff discloses that determining two or more elements in the new polling request includes a least selected element in a first polling request and a least selected element

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in a second polling request (Shah-Nazaroff shows which element receives the least votes as well, fig. 5, and this could be used as the criterion for advancing in the tournament).

Claims 35, 37, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurland (US 4,603,232) in view of Inaba (US 5,880,789).

As regards Claim 35, 37, and 39, Kurland discloses a method, apparatus, and computer program stored on a computer readable medium for participating in an interactive television poll, the method comprising: connecting to a host (col. 8, lines 17-43); receiving a first evaluation round (col. 8, lines 17-43); completing the first evaluation round (col. 9, lines 1-9); transmitting the responses to the first evaluation round (col. 7, lines 49-51); and receiving a subsequent evaluation round i col. 7, lines 49-57). Kurland does not disclose that more popular elements as identified in the first evaluation round. Inaba does disclose that more popular elements as identified in the first evaluation round (Inaba discloses a tournament system for user game, which involves picking the user with the most points to proceed, col. 5, lines 53-54)

At the time of the invention it would have been obvious to one skilled in the art to combine the element selection as done in Inaba, an analogous art, to the polling system of Kurland to provide a better method of asking follow-up questions to the end-user.

Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurland (US 4,603,232) in view of Shah-Nazaroff (US 2002/0053077) and in further view of McKissick (US 2006/0190966).

As regards Claim 32, Kurland and Shah-Nazaroff disclose the method of Claim 1 but fail to disclose sending a set of polling requests includes sending an instant message. McKissick discloses sending a set of polling requests includes sending an instant message (McKissick makes it clear any message with any content can be sent to a set top box in a timely fashion using an instant message, paragraph 88).

At the time of the invention, it would have been obvious to one skilled in the art to combine the instant messaging of McKissick, an analogous art, with the survey system of Kurland and Shah-Nazaroff to provide a widely known and reliable way to send the survey to the user.

As regards Claim 33, McKissick discloses sending the set of polling requests includes sending an electronic mail message (McKissick makes it clear any message with any content can be sent to a set top box in a timely fashion using an e-mail, paragraph 121).

At the time of the invention, it would have been obvious to one skilled in the art to combine the e-mail feature of McKissick, an analogous art, with the survey system of Kurland and Shah-Nazaroff to provide a widely known and reliable way to send the survey to the user.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

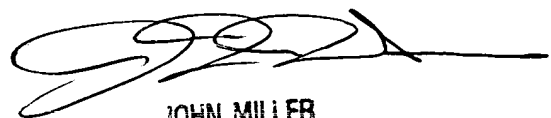
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R. O'Steen whose telephone number is 571-272-7931. The examiner can normally be reached on 8:30 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571-272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DRO



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